IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.29 OF 1989

Shri Gajanan Motiram Keny (since deceased)
through his heirs and legal representatives
Smt. Piroj Gajanan Keny & ors. .. .. Appellants

V/s.

Smt.Jayshree N. Vaity & ors. .. .. Respondents

None for Appellants.

None for Respondents.

CORAM : SMT.ROSHAN DALVI, JJ.

Dated : 13th April, 2007

ORAL JUDGMENT :

Both parties and Advocates absent, though the Appeal is first on Board of the final hearing.

1. This is a First Appeal filed challenging the judgment of the Bombay City Civil Court in Suit No.5855 of 1983, under which the original Defendant No.1 came to be declared as a trespasser and was directed to vacate the suit premises

within a specified time. The original Plaintiff (Respondent No.1 herein) was his niece. The suit premises belongs to the Bombay Municipal Corporation. It was admittedly tenanted to the father of Respondent No.1. She was his only daughter and heir. She was, therefore, entitled to tenancy rights. Her father expired in 1965 when she was 12 years old (her mother having expired when she was a few months old). The Appellant (original Defendant No.1) who was her uncle came to reside in the suit premises to look after her as her guardian. He continued the residence along with his family members. Respondent No.1 was got married. Expenses of the marriage were incurred from the funds left by her father. The husband of Respondent No.1 has since expired.

2. In 1977, the Appellant (original Defendant No.1) made a declaration and tried to obtain transfer of the premises in his name. He was directed by the BMC to obtain the consent of Respondent No.1, which he failed to obtain.

3. All these facts are admitted by the Appellant in his evidence.

4. The Appeal, therefore, rests entirely upon the elementary propositions of law raised by the said admitted facts. Since the suit premises was tenanted to the father of Respondent No.1 (original Plaintiff). She alone was entitled to the transfer of the tenancy rights, she having lived with him as the only family member at the time of his death. The admission of the Appellant that he entered upon the suit premises after the death of her father in 1969 as her guardian shows that he did not acquire the suit premises independently in his own name. He, therefore, at best, was a gratuitous licensee of Respondent No.1 (original Plaintiff) and he occupied the premises only in the capacity of her guardian and not in his individual capacity. He, therefore, could not be transferred the suit premises.

5. The judgment, therefore, is absolutely correct and does

not suffer from any error. Appeal is dismissed. No order as to costs.

(SMT.ROSHAN DALVI, J.)